of property. It is true that a man could accomplish the same results by buying the whole land, and regulating production. But it does not follow, because you can do a thing in one way, that you can do it in all; and we think that if this covenant were regarded as one which bound all subsequent owners of the land to keep its products out of commerce, there would be much greater difficulty in sustaining its validity than if it be treated as merely personal in its burden. Whether that is its true construction, as well as its only legal operation, and whether, so construed, it is or is not valid, are matters on which we express no opinion.

Bill dismissed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ERRORS OF CONNECTICUT.[2]
SUPREME JUDICIAL COURT OF MAINE.[3]
COURT OF ERRORS AND APPEALS OF MARYLAND.[4]
SUPREME COURT OF OHIO.[5]

ACTION.

Suit by Prospective Heirs.—The principle is, both at law and in equity, that no one is entitled to be recognised as heir until the death of the ancestor or person from whom the descent may be cast; and the fact that such ancestor or other person may be alleged and admitted to be *non compos mentis*, or otherwise incapable of managing his estate, makes no exception to the general principle: *Sellman* v. *Sellman*, 63 Md.

The children of a grantor cannot maintain a bill in their own names, as parties complaining, against the grantor himself and his grantee, for the purpose of impeaching and having set aside a conveyance, upon the ground of fraud and undue influence, and because such conveyance would operate to defeat their future inheritance: *Id.*

AGENT. See *Criminal Law.*

ASSIGNMENT. See *Contract.*

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 115 U. S. Rep.

[2] From John Hooker, Esq., Reporter; to appear in 52 Conn. Rep.

[3] From J. W. Spaulding, Esq., Reporter; to appear in 77 Me. Rep.

[4] From J. Shaaff Stockett, Esq., Reporter; to appear in 63 Md. Rep.

[5] From George B. Okey, Esq., Reporter; to appear in 43 Ohio St. Rep.

ATTACHMENT.

Foreign Attachment—Claim for a Tort.—A claim for a tort is not a "debt" within the meaning of that term as used in the statute with regard to foreign attachment: *Holcomb* v. *Town of Winchester*, 52 Conn.

And it makes no difference that a suit has been brought for the tort, and that the case stands for a hearing in damages after a default. *Id.*

Stock in Corporation—Prior Pledge—Practice—Dividends.—The interest of a stockholder in the property of a private corporation represented by certificates of shares registered in his name, may be reached by garnishee process served upon the corporation: *Norton* v. *Norton*, 43 Ohio St.

If the corporation is the attaching creditor, it may by such process served upon itself, reach such interest: *Id.*

Where, prior to the service of such process, the shareholder has pledged the certificates as security for a debt and has delivered them to the pledgee, with an absolute power of sale and transfer upon the books of the corporation endorsed thereon, upon default of payment of the debt hereby secured, th e attachment reaches only the surplus after payment of the debt to the pledgee: *Id.*

If, after this interest in the corporation has been thus attached, the pledgee does not exercise the power of sale and transfer vested in him, and the stock remains in the name of the pledgor on the books of the corporation, the court may, proper parties being before it, order the sale of the stock, ascertain such surplus, and order its application to the satisfaction of the judgment in attachment: *Id.*

Such an attachment has precedence over a later one where it is sought to reach this surplus, by garnishee process served upon the pledgee, who has never exercised the power of sale and transfer: *Id.*

Dividends made by the corporation and remaining in its hands after process in attachment has been served, follow the stock, and are subject to the same order of distribution: *Id.*

ATTORNEY.

Confidential Communication—Disclosure of Intent to commit Crime.—It seems to be required by principle that an attorney, learning from the client in a professional consultation, or in any other manner, that the latter proposes to commit a crime, should be holden to owe a higher duty in the matter to society, and to the party to be affected by the crime, than that which he owes to his client. *State* v. *Barrows*, 52 Conn.

But this exception to the general rule protecting the communications of a client, should be applied only to such statements as afford reasonable evidence of the guilty intent: *Id.*

The rule which protects privileged communications from disclosure is one of public policy and in the interest of justice and its administration, and not one of which only the party making the communication can claim the benefit: *Id.*

BANKRUPTCY.

Sale of Land by Assignee—Injunction not Granted against Subsequent Sale by Order of State Court.—Where a sale of the lands of a bankrupt estate has been made and confirmed by order of the bankruptcy court, and the lands have been conveyed by the assignee, the Circuit Court of the United States is without jurisdiction at the suit of the purchaser to enjoin a sale of the same lands about to be made upon the order of a state court upon judgments in suits commenced by attachment of the lands in question a few days before the defendant was adjudicated a bankrupt: *Sargent* v. *Helton*, S. C. U. S., Oct. Term 1885.

BILLS AND NOTES. See *Contract; Limitation, Statute of.*

Days of Grace—Acceptance on Sight Bill without Date, but Specifying Day Bill is Due—Protest.—A bill of exchange, dated March 4th, payable in London sixty days after sight, was accepted by drawee "due twenty-first May," but without date of acceptance: *Held*, that in the absence of affirmative proof that the acceptor in designating the day of payment by the word "due," included the days of grace; protest on May 21st must be considered premature: *Bell* v. *First National Bank*, S. C. U. S., Oct. Term 1885.

COMMON CARRIER. See *Railroad.*

CONSTITUTIONAL LAW. See *Removal of Causes.*

Proceedings against Inhabitants for Debt of Town.—A statute authorizing executions upon judgments against towns to be issued against and levied upon the goods and chattels of the inhabitants, is constitutional: *Eames* v. *Savage*, 77 Me.

The process provided in that section is "due process of law," and is not in conflict with the Fourteenth Amendment of the Constitution of the United States: *Id.*

Power to Enact Registration Law.—The general assembly, under the general grant of legislative power secured to it by the constitution, has power to provide by statute for the registration of voters, and to enact that all electors must register before being permitted to vote: *Daggett* v. *Hudson*, 43 Ohio St.

Such an act, however, to be valid, must be reasonable and impartial, and calculated to facilitate and secure the constitutional right of suffrage, and not to subvert or injuriously, unreasonably or unnecessarily restrain, impair or impede the right: *Id.*

Due Process of Law—Railroad Fence Law—Exemplary Damages—Police Power.—Suit was brought under a Missouri statute requiring railroad companies to fence their tracks and maintain cattle guards, as therein specified, where the road runs through or adjoins cultivated fields or enclosed lands, and providing, in default thereof, that such corporations shall be liable in double the amount of all damages done by its agents, engines or cars to animals on said road, or by reason of any animal escaping from or coming upon said lands and fields, occasioned in either case by failure to maintain such fences or cattle guards; *Held*,

that the statute does not violate sect. 1, of the Fourteenth Amendment to the Constitution of the United States, by depriving the company of property without due process of law in that it allows a recovery of damages for stock killed or injured in excess of its value; nor does it deny it the equal protection of the laws, since each railroad is subjected to the same liability: *Missouri Pac. Railway* v. *Humes*, S. C. U. S., Oct. Term 1885.

For injuries resulting from neglect of duties, in the discharge of which the public is interested, something beyond compensatory damages may be awarded to the owner by way of punishment for the company's negligence; and the legislature may fix the amount or prescribe the limit within which the jury may exercise their discretion. Authority for imposing such duties as prescribed by the statute in question is found in the police power of a state to provide against accidents to life and property in any business: *Id.*

CONTEMPT.

What Constitutes—Power of Court—Practice.—A defendant in a suit procured a postponement through his counsel on the ground that he was too ill to attend court. The counsel for the plaintiff, suspecting that there had been deception, filed an application, accompanied with affidavits, for an attachment of the defendant for contempt. An order to show cause was issued by the court and served on the defendant. He however did not appear, claiming to be too ill, but his counsel appeared for him and filed an answer, asserting the fact of his illness, and disclaiming all intention to disobey the court. To this the plaintiff filed no reply. A hearing was then had in the absence of the defendant, against the protest of his counsel, and the court found him guilty of the contempt charged and sentenced him to pay a fine and costs, the latter taxed as in an ordinary civil suit. *Held*, on the defendant's appeal—1. That the conduct of the defendant, so far as it tended to obstruct and embarrass the court in the administration of justice, was of the nature of a contempt, and that the court below having found it to be a contempt, this court could not, as matter of law, say that it was not so. 2. But that, as the contempt was not committed in the presence of the court, the court could find the defendant guilty of it only on regular proof, making a trial necessary. 3. That as the contempt was a criminal one a civil proceeding for its punishment was irregular; and that the proceeding should have conformed, as nearly as possible, to those in criminal cases. 4 That the court had no power to proceed to trial and judgment in the absence of the defendant, and that he had a right to be heard. 5. That affidavits were improperly admitted as evidence on the trial; also a deposition taken on the part of the plaintiff: *Welch* v. *Barber*, 52 Conn.

CONTRACT.

Consideration—Delivery.—The treasurer of a savings bank made his note for $2000, running to the bank, and secured it by an assignment of a life insurance policy on his own life, for the purpose of making up to the bank a loss on loans for which he was neither morally nor legally responsible. After his death the trustees of the bank found the note

and policy, which was the first knowledge they had of the existence of either, and they applied the insurance money first to the payment of the note, and the balance they delivered to the executor of the deceased treasurer: *Held*, 1. That the note was without consideration and void. 2. That the assignment of the policy was void for want of a delivery: *Dexter Sav. Bank* v. *Copeland*, 77 Me.

Offer to subscribe to Stock—Revocation.—An offer in writing to subscribe to the capital stock of a railroad company, conditioned upon the construction of its line of road along a designated route, is revocable at the option of the party making such offer at any time before its delivery to and acceptance by such company; and his death before such delivery and acceptance works such revocation: *Wallace* v. *Townsend*, 43 Ohio St.

CORPORATION.

Dividends—Right of Court to compel Declaration of.—As a rule, officers of the corporation are the sole judges of the propriety of declaring dividends. But they are not allowed to act illegally, wantonly or oppressively. And when the right to a dividend is clear, and there are funds from which it can properly be made, a court of equity will compel the company to declare it: *Belfast & Moosehead Lake Rd. Co.* v. *Belfast*, 77 Me.

Corporation de facto—Rights of—Effect of Judgment of Ouster.—Where an attempt is made, in good faith, to organize a private corporation by colorable proceedings, approved by the Attorney-General and the Secretary of State; the paper intended for the certificate of incorporation admitted to record in the office of the latter, duly certified by him as the certificate of incorporation of such body; where these steps are followed by uninterrupted and unchallenged user for a number of years, and valuable rights and interests have been in good faith acquired, enjoyed and disposed of by such organization, acting as a body corporate, it is a corporation *de facto*, and its corporate capacity cannot be questioned in a private suit to which it is a party: *Society Perun* v. *City of Cleveland*, 43 Ohio St.

Such an organization has capacity to acquire, hold, enjoy, encumber, and convey the legal title to real estate; and rights acquired or liabilities incurred by it and by parties dealing with it in good faith will not be divested or defeated by a subsequent judgment in *quo warranto* proceedings excluding it from the use of corporate franchises by reason of some defect or omission in the original steps taken to assume corporate powers: *Id.*

A judgment of ouster against a pretended corporation by reason of defect in the form of the certificate of incorporation, is not retroactive in its effect upon rights acquired and liabilities incurred in the course of transactions in good faith with such acting corporation, prior to such ouster: *Id.*

Turnpike Company—Liability for Injury to Traveller—Dangerous Grades.—A turnpike company which derives a revenue from the use of its road by travellers, is directly liable to those who travel upon it for injuries occasioned by the want of repair of the road, without any ex-

press statutory provision imposing such a liability. The liability to pay tolls is a consideration for the undertaking on the part of the corporation to furnish a safe road for the use of the traveller as an equivalent: *President, &c., Baltimore and Yorktown Turnpike Road* v. *Crowther*, 63 Md.

Where differences in grade exist, the company is bound to make safe and convenient turnouts to the side roads, and where such differences are so great and the slopes to the side roads so precipitous as to be necessarily dangerous, such places should be protected by proper safeguards: *Id.*

Costs.

Payment out of Fund.—In suits where one person incurs expense in rescuing property for the benefit of many, a court of equity has power to direct that the expenses so incurred shall be paid from the common fund: *Merwin* v. *Richardson*, 52 Conn.

Contribution. See *Costs.*

Court. See *Contempt.*

Criminal Law.

Selling Liquor to Minor—Act of Agent.—A licensed dealer in spirituous liquors, indicted for unlawfully selling liquor to a minor, cannot escape the penalty of the offence by proving that the sale was made by his barkeeper, during his absence, without his knowledge and contrary to his instructions given in good faith, and which were so understood by the barkeeper. The intent in such case is immaterial in determining the guilt: *Carroll* v. *State*, 63 Md.

Where the agent is set to do the very thing which, and which only, the business of the principal contemplates, namely, the dispensing of liquors to purchasers, the principal must be chargeable with the agent's violation of legal restrictions on that business. The act of the agent is the act of the principal: *Id.*

Debtor and Creditor. See *Equity.*

Equity. See *Corporation; Lis Pendens.*

Creditors' Bill—Parties Defendants—Multifariousness.—Where a debtor conveys all his property in distinct parcels to separate parties and dies, a creditors' bill to set aside said conveyances for fraud, may join all the grantees in the several deeds as defendants, in order to bring all the property within reach of the creditors' claims: *Brian* v. *Thomas*, 63 Md.

There is no rule of universal application as to the doctrine of multifariousness, and much must be left to the discretion of the court in particular cases: *Id.*

Bill to Restrain Nuisance—Joinder of Defendants whose Several Acts Contribute to the Nuisance.—Where several respondents, though acting independently of each other, deposit the refuse material and debris

arising from the operation of their mills into the same stream, whence, by the natural current of the water, it is carried down the river and commingles into one indistinguishable mass before reaching the complainant's premises. *Held*, upon a bill in equity for perpetual injunction, that while the acts of the respondents may be independent and several, the result of these several acts combines to produce whatever damage or injury the complainant suffers, and in equity constitutes but one cause of action, and all the respondents may be joined in the same bill to restrain the nuisance: *The Lockwood Co.* v. *Lawrence* 77 Me.

Errors and Appeals.

Powers of a Court of Error as to Evidence—Decision as to Right to Closing Argument not Reviewable.—The Supreme Court of the United States cannot review the weight of the evidence, and can look into it only to see whether there was error in not directing a verdict for the plaintiff on the question of variance, or because there was no evidence to sustain the verdict: *Lancaster* v. *Collins*, S. C. U. S., Oct. Term, 1885.

The question as to which party shall make the closing argument to the jury is one of practice, and is not the subject of a bill of exceptions or of a writ of error: *Id.*

Jurisdiction of the United States Supreme Court—$5000 Limit—Several Defendants and Separate Judgments.—Where suit is brought against heirs to enforce their liability for the payment of a note on which their ancestor was bound, and they plead neither counter-claim nor set-off, and ask no affirmative relief, and separate judgments are rendered against each for his proportionate share, this court has jurisdiction in error only over those judgments which exceed $5000: *Henderson* v. *Wadsworth*, S. C. U. S., Oct. Term, 1885.

Evidence.

Right of Witness to Decline to give Evidence Criminating him—Practice.—The privilege accorded to a witness of declining to make any disclosure that might be used for his crimination, is a personal privilege, and must be claimed by him upon oath, and neither the party to the cause, nor the counsel engaged, will be permitted to make the objection: *Chesapeake Club* v. *State*, 63 Md.

The mere statement of the witness on oath that he believes that the answer to the question asked will tend to criminate him, will not suffice to protect him from answering, if from all the circumstances surrounding the case the court be satisfied that the answer will have no such effect as that claimed by the witness. It is for the court to decide whether the privilege is well and *bona fide* claimed or not: *Id.*

After a witness has been sworn he may claim his protection at any stage of the inquiry, and upon his so doing he cannot be compelled to answer any additional question that would tend to criminate him: *Id.*

Witness—Refreshing Recollection by Memoranda.—A witness may

refer to memoranda made by himself or others for the purpose of refreshing his recollection: *Erie Preserving Co.* v. *Miller*, 52 Conn.

And it is of no consequence whether the memoranda thus referred to are originals or copies; they are solely for the use of the witness and are not evidence to go to the jury: *Id.*

What necessary to Warrant Verdict in Civil Case.—In civil cases the verdict of the jury should be determined by the mere preponderance of evidence, even though the conclusion imputes to the defendant the guilt of a felony: *Mead* v. *Husted*, 52 Conn.

In a civil suit for the burning of the plaintiff's barns the judge instructed the jury that if, after giving the defendant the benefit of the presumption in his favor, they fairly and honestly believed that it was more likely to be true that the defendant set fire to the plaintiff's barns than that he did not, they ought to render a verdict for the plaintiff, and if they did not so believe, then for the defendant: *Held*, on the defendant's appeal, to be no error: *Id.*

Executors and Administrators.

When Purchaser at Invalid Sale of Real Estate made by Administrator by Order of Probate Court, not Protected.—The Mississippi Code of 1871, sect. 2173, by which any action to recover property because of the invalidity of an administrator's sale by order of a probate court must be brought within one year, "if such sale shall have been made in good faith, and the purchase-money paid," does not apply to an action brought by the heir to recover land bid off by a creditor at such a sale for the payment of his debt, and conveyed to him by the administrator, and not otherwise paid for than by giving the administrator a receipt for the amount of the bid. The invalidity of the sale in this case was owing to the administrator never having given bond to account for the proceeds of the sale as required by statute: *Clay* v. *Field*, S. C. U. S. Oct. Term 1885.

Gift.

Donatio causa mortis—What Constitutes.—G. was a man of advanced age, having a wife, and daughters by a first wife, and, by the present wife a son, with whom he boarded; his property consisted partly of a farm and stock thereon, but mostly of promissory notes of various amounts; before his last sickness he had expressed a desire "that his children should have his notes and his son should have his farm;" on the morning of the day of his death, and in the presence of a daughter's husband, herself and a sister, G. called the daughter and said to her, "my notes are in a little box on the bureau there, I want you to take them and divide them equally among you children;" he told her to get the key to the box, and she got the key and tried it in the box, and gave the key to her husband for safe keeping. After his death intestate, she took the box and did not divide the notes, but returned them to the administrator, and they were appraised and held as part of the estate. In an action by the daughters, claiming for themselves and the son, the notes and their proceeds as against the administrator and the

widow: *Held*, 1st. These facts do not show such a delivery as constitutes a valid gift *causa mortis*. 2d. These notes and their proceeds are assets of the estate, and the widow is entitled to her proper part thereof: *Gano* v. *Fisk*, 43 Ohio St.

HIGHWAY. See *Corporation.*

HUSBAND AND WIFE.

Burial Expenses of Wife—By whom Payable.—It is the duty of a husband to defray the expense of burying, in a suitable manner, his deceased wife, and he has no right to charge it against her estate: *Staple's Appeal from Probate*, 52 Conn.

Receipt of Wife's Money by Husband—When Wife is a Creditor.—A wife may become a creditor of her husband, in respect of money or property belonging to her as her separate estate, which the husband has received under an express promise at the time to repay her. But if such money or other separate property has been received by the husband with the knowledge and acquiescence of the wife, without such express promise at the time, no implied assumpsit, either legal or equitable, will arise to support a claim against the husband or his estate: *Grover & Baker Sewing Machine Co.* v. *Radcliff*, 63 Md.

Divorce—Alimony—Subsequent Re-marriage—Reduction.—Where alimony had been granted, in instalments, to a divorced wife, and she is afterwards re-married to a man financially able to, and who does, in fact, support her, these facts would *prima facie* be a good cause for modifying the former decree so as to reduce the amount to be paid for her support to a nominal sum, or such sum, as in the changed condition of the defendant, the court might deem just and reasonable: *Olney* v. *Watts*, 43 Ohio St.

INJUNCTION. See *Equity; Railroad.*

INTEREST. See *Mortgage.*

INTOXICATING LIQUOR. See *Criminal Law.*

LIMITATIONS, STATUTE OF.

Endorsement of Payment on Note.—An endorsement of the payment of money on a note, made by the holder after it has become barred by the statute of limitations, is to be regarded as an entry made in his interest: *Coon's Appeal from Commissioners*, 52 Conn.

Where in such a case it had been found in the court below that there was no evidence that the money so endorsed was in fact paid by the maker or with his knowledge, it was *held* that this court could not, as matter either of fact or of law, infer such payment from the endorsement: *Id.*

LIS PENDENS.

What constitutes.—That to constitute a *lis pendens* to bind a purchaser, a bill must not only be actually filed, having special reference to spe-

cific property, but the subpœna must also have been served upon the defendant, before the *lis pendens* will begin: *Sanders* v. *McDonald*, 63 Md.

Mortgage.

Mortgagor—Presumption of Payment—Statute of Limitations.—The presumption of payment in favor of a mortgagor in possession over twenty years, is not conclusive, but may be rebutted by evidence of part payment of principal or interest, or by admissions of the existence of the debt, or other circumstances from which it may be inferred the debt has not been paid. In other words, a recognition of the mortgage debt involving a promise to pay it, will remove the bar of the Statute of Limitations: *Brown* v. *Hardcastle*, 63 Md.

Where a bond is given conditioned for the payment of a sum named, with one per cent. interest thereon by a particular day, and there is no stipulation in relation to interest after that day, in case the debtor should fail to pay the debt, the creditor is entitled to the legal rate of interest after that time: *Id.*

Trust Deed to two Trustees—Absence of one of them at the Sale.—Under a deed of trust covering land in the District of Columbia, made by a debtor to two grantees, their heirs and assigns, to secure the payment of a promissory note, by which deed the grantees were empowered, on default, to sell the land at public auction, "on such terms and conditions, and at such time and place, and after such previous public advertisement," as they "their assigns or heirs," should deem advantageous and proper, and to convey the same in fee simple to the purchaser, a sale was had by public auction, under a notice of sale, signed by both of the trustees, and duly published in a newspaper; but at the sale only one of the trustees was present. The proceedings at the sale were fair: both of the trustees united in a deed to the purchaser, and no ground appeared for setting the sale aside: *Held*, that the absence from the sale of one of the trustees was not a sufficient reason, of itself, for setting aside the sale, as against the former owner of the land: *Smith* v. *Black*, S. C. U. S., Oct. Term 1885.

Negligence. See *Corporation.*

Municipal Corporation. See *Officer.*

Nonsuit.

Right of Plaintiff to Suffer.—After the evidence was closed upon both sides the plaintiff stated that he voluntarily became nonsuit, and the court ruled as a matter of law that he could not become nonsuit against the defendant's objection. *Held*, error: *Washburn* v. *Allen*, 77 Me.

Before opening his case the plaintiff may become nonsuit as a matter of right. After the case is opened, and before verdict, he may have leave to become nonsuit in the discretion of the court; after verdict there can be no nonsuit: *Id.*

Nuisance. See *Equity.*

OFFICER.

Removal—Pre-requisites.—Where an officer is "subject after hearing to removal by the mayor, by and with the advice and consent of the aldermen," the hearing must be by the "board of mayor and aldermen." A hearing by the aldermen alone is not sufficient, even if by the officer's consent: *Andrews* v. *King*, 77 Me.

Where an officer is removable in the manner above stated for "inefficiency or other cause," the mayor and aldermen must find sufficient cause to exist as matter of fact, and so adjudicate, before a valid order of removal can be made. An omission to pass upon the truth of the charges invalidates the order of removal: *Id.*

PRACTICE. See *Nonsuit.*

RAILROAD.

Discrimination in Freights—Injunction.—Discrimination in rates by a railroad company cannot be upheld simply because the favored shipper may furnish for shipment during the year a larger freightage in the aggregate than any other shipper, or more than all others combined. A discrimination resting exclusively on such a basis will not be sustained; *Schofield* v. *Lake Shore & M. S. Railroad*, 43 Ohio St.

Where it appeared that the plaintiffs' business was such as to make them frequent shippers, and that a continuous series of shipments was necessary in conducting their business, and that a remedy sought by actions at law would lead to a multiplicity of suits: *Held*, the court will intervene by injunction to prevent a multiplicity of suits, and it is not a pre-requisite that the plaintiffs should have first established their rights by an action at law: *Id.*

Where a defendant railroad company is a corporation, consolidated under the statutes of several states, including this state, and its road extends into several states: *Held*, that its acts of injurious discrimination committed or threatened in this state, to the business of shippers, either here or along the line of its railroad in this state, may be enjoined by the courts of this state: *Id.*

REMOVAL OF CAUSES.

Case arising under the Constitution or Laws of the United States.—If from the questions involved in a case, it appears that some title, right, privilege or immunity on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of March 3d 1875, otherwise not: *Starin* v. *New York*, S. C. U. S., Oct Term 1885.

SALE.

Conditional Sale—Title.—An innkeeper sent the following order to a wholesale liquor dealer: "Please send by first express a half barrel Bourbon whiskey and two baskets of Piper wine. What is used I will

account for and ship rest back to you. I want it for the commercial travellers, who will be here Friday to dinner:" *Held*, that the title passed on delivery to the innkeeper, so that the liquors could be attached by his creditors as his property: *Hotchkiss* v. *Higgins*, 52 Conn.

Contract of—Place of Shipment a Material Incident—Repudiation of Contract.—In a mercantile contract a statement descriptive of the subject-matter, or of some material incident, such as the time or place of shipment, is ordinarily to be regarded as a warranty, or condition precedent, upon the failure or non-performance of which the party aggrieved may repudiate the whole contract: *Filley* v. *Pope*, S. C. U. S., Oct. Term 1885.

Under a contract for the sale of "500 tons No. 1 Shotts (Scotch) pig iron, at $26 per ton cash, in bond at New Orleans; shipment from Glasgow as soon as possible; delivery and sale subject to ocean risks,"—shipment from Glasgow is a material part of the contract, and the buyer may refuse to accept such iron shipped as soon as possible from Leith, and arriving at New Orleans earlier than it would have arrived by the first ship that could have been obtained from Glasgow: *Id.*

SHIPPING.

Contract between Part Owners as to Sailing.—Whether a contract entered into between two of several part owners of a vessel, wherein they mutually stipulate that each shall sail the vessel as master alternate years, is void as against public policy—*quere*: *Rogers* v. *Sheerer*, 77 Me.

Assuming such a contract to be valid, the true construction of it is, that each shall sail the vessel alternate years, only so long as he performs the high and responsible duties of master with that degree of care, attention, prudence and fidelity which the law demands; and when he fails to do that, he can no longer invoke the aid of the contract against the other: *Id.*

Earnings—Action by Part Owner against Master.—An action for money had and received cannot be maintained by a part owner (not the ship's husband), for his share of the freight money, against the master, who collected and remitted the same to the ship's husband after receiving a written notice from such part owner to remit his share to him: *Patten* v. *Percy*, 77 Me.

WITNESS. See *Evidence*.